



**Billing Code: 4910-81-P**

## **DEPARTMENT OF TRANSPORTATION**

### **Maritime Administration**

#### **46 CFR Part 393**

#### **RIN 2133-AB84**

### **Revision of the America's Marine Highway Program Regulations**

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Final rule.

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**SUMMARY:** The Maritime Administration (MARAD) is amending its America's Marine Highway Program (AMHP) regulations to implement provisions of the Coast Guard and Maritime Transportation Act of 2012 (CGMTA), the National Defense Authorization Act of 2016 (NDAA), and to clarify AMHP processes. The revisions expand the purpose of the AMHP to include promoting short sea transportation, update the definition of short sea transportation, and streamline the regulation to highlight procedures and resources available to program participants.

**DATES:** This final rule becomes effective on [insert date 30 days after publication in the Federal Register].

**FOR FURTHER INFORMATION CONTACT:** Tim Pickering, Office of Marine Highways and Passenger Services, at (202) 366-0704, or via e-mail at [MH@dot.gov](mailto:MH@dot.gov). You may send mail to Mr. Pickering at Office of Marine Highways and Passenger Services, 1200 New Jersey Avenue, SE, Washington, DC 20590.

### **SUPPLEMENTARY INFORMATION:**

#### **Background**

*What laws authorize the America's Marine Highway Program?*

The Energy Independence and Security Act of 2007 (EISA) authorized the Secretary of Transportation (Secretary) to promulgate regulations to implement the AMHP. The Secretary of Transportation delegated authority to the Maritime Administrator to issue AMHP implementing regulations. On April 9, 2010, MARAD published in the Federal Register final regulations implementing the AMHP (75 FR 18101).

The Secretary, in consultation with the Environmental Protection Agency, submitted a Report to Congress in April 2011 that included a description of the benefits of the AMHP and activities conducted under the program. It also included recommendations for further legislative and administrative action that the Secretary considered appropriate.

In December 2012, the Coast Guard and Maritime Transportation Act of 2012 (CGMTA), which built on some of the ideas in the report, was signed into law. The CGMTA expanded the scope of the AMHP by adding the words “or to promote short sea transportation” to the existing purpose of reducing landside congestion. This added language expanded the focus of the AMHP to include efforts that increase utilization or efficiency of short sea transportation on designated Marine Highway Routes.

In November 2015, the National Defense Authorization Act for Fiscal Year 2016 added to the definition of short sea transportation, that is the subject of the AMHP, to include the carriage by a documented vessel of cargo that is: (1) shipped in discrete units, or packages that are handled individually, palletized; or, (2) unitized for purposes of transportation or freight vehicles carried aboard commuter ferry boats.

## **Discussion**

*Why and how is MARAD revising the regulations?*

As part of our routine systematic review of existing regulations, MARAD is updating its AMHP implementing regulations to conform to statutory changes and streamline the regulations for ease of use. Accordingly, the rule revises in full the AMHP implementing regulations to: (1) add “promote short sea shipping” as a purpose of the AMHP; (2) re-designate “corridors, connectors, and crossings” as used in the rule as “Routes” for purposes of simplicity; (3) expand and clarify the definition of AMHP-eligible cargo to include discrete units or packages that are handled individually, palletized, or unitized as well as freight vehicles carried aboard commuter ferry boats; (4) add a requirement for the project sponsors to provide updates on project status; (5) expand the eligibility criteria for services and Routes that may participate in AMHP; (6) clarify criteria for Project Designation; and, (7) reorganize the regulations for ease of use.

*What is the purpose of the AMHP?*

Congress authorized the AMHP to promote short sea shipping by designating routes, also called Marine Highways, as a way to relieve congestion on America’s roads and railways. Marine Highway designations are intended to assist the maritime industry in meeting national freight transportation needs. The AMHP encourages the use of marine transportation to reduce freight and passenger travel delays caused by congestion, reduce greenhouse gas emissions, conserve energy, improve safety, and reduce landside infrastructure maintenance costs.

Congestion on the U.S. surface transportation system significantly impacts America's economic prosperity and way of life. Overall, the U.S. Department of Transportation (USDOT) estimates that congestion on our roads, bridges, railways, and in ports costs the United States as much as \$200 billion a year and projects that cargoes moving through our ports will nearly double over the next 15 years. Most of this additional cargo will ultimately move along our surface transportation corridors, many of which are already at or beyond capacity.

## **Rulemaking Analysis and Notices**

*Executive Order 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review) and DOT Regulatory Policies and Procedures.*

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), supplemented by EO13563 (76 FR 3821, January 18, 2011) and USDOT policies and procedures, MARAD must determine whether a regulatory action is “significant,” and therefore subject to the Office of Management and Budget (OMB) review and the requirements of the Order. The Order defines “significant regulatory action” as one likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities. (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency. (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the EO.

MARAD has determined that this rulemaking is not considered a significant regulatory action under section 3(f) of EO 12866 and, therefore, it was not reviewed by OMB. This rulemaking will not result in an annual effect on the economy of \$100 million or more. It is also not considered a major rule for purposes of Congressional review under Pub. L. 104-121. This rulemaking is also not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034, February 26, 1979). The costs and overall economic impact of this rulemaking do not require further analysis.

Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs)

This rule is not an EO 13771 regulatory action because this rule is not significant under EO 12866.

*Executive Order 13132 (Federalism)*

MARAD analyzed this rulemaking in accordance with the principles and criteria contained in EO 13132 ("Federalism") and has determined that it does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement. This rulemaking has no substantial effect on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. Nothing in this document preempts any State law or regulation. Therefore, MARAD was not required to consult with State and local officials.

*Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)*

MARAD does not believe that this rulemaking will significantly or uniquely affect the communities of Indian tribal governments when analyzed under the principles and criteria contained in EO 13175 (Consultation and Coordination with Indian Tribal Governments); therefore, the funding and consultation requirements of this Executive Order do not apply.

*Executive Order 12372 (Intergovernmental Review)*

The regulations implementing EO 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rulemaking.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 requires MARAD to assess whether this rulemaking would have a significant economic impact on a substantial number of small entities

and to minimize any adverse impact. MARAD certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities.

#### *Environmental Assessment*

MARAD has evaluated this rulemaking under Maritime Administrative Order (MAO) 600-1, "Procedures for Considering Environmental Impacts," 50 FR 11606 (March 22, 1985), which guides MARAD in complying with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq. MARAD has determined that this rulemaking is not a major action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4.05 of MAO 600-1. Section 4.05 reads, in pertinent part, "[c]ategorical exclusions are Maritime Administration actions or groups of actions that do not have a significant effect on the quality of the human environment, individually or cumulatively. Categorical exclusions do not require preparation of environmental documents. Appendix 1 of this order [MAO-600-1] describes the Maritime Administration's categorical exclusions." This action falls under Categorical Exclusion #3 because MARAD's revisions to the regulations "do not require a regulatory impact analysis under section 3 of Executive Order 12291 or do not have a potential to cause a significant effect on the environment..." MAO 600-1, App.1, pg. 1.

In accordance with section 4.05 and Appendix 2 of MAO 600-1, the Agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, MARAD finds that this regulatory revision is not a major Federal action significantly affecting the quality of the human environment.

#### *Executive Order 13211 (Energy Supply, Distribution, or Use)*

MARAD has determined that this rulemaking will not significantly affect energy supply, distribution, or use. Therefore, no Statement of Energy Effects is required.

*Executive Order 12988 (Civil Justice Reform)*

This action meets applicable standards in sections 3(a) and 3(b)(2) of EO 12988, Civil Justice Reform, to minimize litigation, eliminates ambiguity, and reduce burden.

*Executive Order 12630 (Taking of Private Property)*

This rulemaking will not affect a taking of private property or otherwise have taking implications under EO 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

*International Trade Impact Assessment*

This rulemaking is not expected to contain standards-related activities that create unnecessary obstacles to the foreign commerce of the United States.

*Privacy Impact Assessment*

Section 522(a)(5) of the Transportation, Treasury, Independent Agencies, and General Government Appropriations Act, 2005 (Pub. L. 108–447, div. H, 118 Stat. 2809 at 3268) requires the USDOT and certain other Federal agencies to conduct a privacy impact assessment of each proposed rule that will affect the privacy of individuals. Claims submitted under this rule will be treated the same as all legal claims received by MARAD. The processing and treatment of any claim within the scope of this rulemaking by MARAD shall comply with all legal, regulatory and policy requirements regarding privacy.

*Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995 requires Agencies to evaluate whether an Agency action would result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$141.3 million or more (as adjusted for inflation) in any 1 year, and if so, to take steps to minimize these unfunded mandates. This rulemaking will not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It will not result in costs of \$141.3 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objectives of the rule.

#### *Regulation Identifier Number (RIN)*

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

#### *Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 et seq.), Federal agencies must obtain approval from OMB for each collection of information they conduct, sponsor, or require through regulations. This rulemaking updates the regulations due to changes made by the CGMTA, the NDAA, and to clarify AMH program procedures. This rulemaking contains no new or amended information collection or recordkeeping requirements that have been approved or require approval by OMB.

#### **Comments on the Proposed Rule**



In response to the agency's Federal Register document seeking public comment on its proposed revisions to 46 CFR part 393 published on January 11, 2017 (82 FR 3250), we received one comment from the Center for Biological Diversity (CBD). The commenter requests that MARAD analyze the revisions' impacts and the impacts of the AMHP as a whole under NEPA, and consult on impacts of the revisions to species listed under the Endangered Species Act (ESA), 16 U.S.C. 1531 et seq. Specifically, CBD requests that MARAD consider the impacts arising from increased shipping noise and risk of ship strikes to endangered and threatened marine species resulting from increased traffic as a result of the AMHP. CBD also requests that the revisions to the rule require proponents of individual AMH corridors and projects to prepare environmental assessments as a condition for designation. CBD further requests that the revisions to the rule also require MARAD to consult on impacts to ESA-listed species before designation.

Pursuant to the requirements of the CGMTA and NDAA, this rulemaking expands the purpose of the AMHP to promote short sea transportation, updates the definition of short sea transportation, and clarifies AMHP procedures highlighting resources available to program participants. CBD provided no specific comments with respect to the Agency's proposed changes in this rulemaking to conform the AMH implementing regulations to the relevant statutory amendments, and therefore CBD's comments are outside the scope of this rulemaking. Nevertheless, in response to CBD's comments, MARAD states that it complies with all environmental laws in the administration of its programs. All future project proposals under the AMHP will be reviewed in accordance with the requirements contained in NEPA and all applicable environmental laws.

In regard to CBD's request that MARAD analyze the environmental impacts of the revisions to the rule and the AMHP under NEPA and to participate in interagency consultation under the ESA for any impacts the revisions may have upon listed species, MARAD has performed the required environmental review for this rulemaking under NEPA and MAO 600-1 "Procedures for Considering Environmental Impacts."

In response to the agency's Federal Register document seeking public comment on its proposed revisions to 46 CFR part 393, we received one comment from the American Federation of Labor and Congress of Industrial Organizations (AFL/CIO) Transportation Trades Department (TDD). The comment offered their strong support for the proposed rule citing the need to address congested corridors, reduce shipping costs and improve safety. The commenter credited the AMHP with providing meaningful options for companies utilizing short sea shipping and for promoting job growth in the maritime industry. In addition, TDD noted challenges facing the maritime industry and MARAD in the areas of Title XI loan guarantees and potential double taxation of goods transported using domestic short sea shipping via the Harbor Maintenance Tax. Both of these areas of concern are outside of the scope of the AMH Program.

The Harbor Maintenance Tax (HMT) funds the Harbor Maintenance Trust Fund (HMTF) to fund port and harbor dredging activities by the Corps of Engineers. The HMT and HMTF are not managed by the Department of Transportation. Economic soundness is a key requirement and projects need to have a viable business case or the Maritime Administration cannot approve it. To date, no operators have applied for a Title XI loan guarantee for an AMH Project.

### **List of Subjects in 46 CFR Part 393**

Vessels.

For the reasons stated in the preamble, the Maritime Administration revises 46 CFR part 393 to read as follows:

## **PART 393—AMERICA'S MARINE HIGHWAY PROGRAM**

### **Subpart A – General Provisions**

#### **Sec.**

#### **393.1 Special definitions**

### **Subpart B – Marine Highway Route and Project Designations**

#### **393.2 Marine Highway Routes.**

#### **393.3 Marine Highway Projects.**

### **Subpart C – Department of Transportation Efforts to Foster and Support America's Marine Highways**

#### **393.4 DOT Support for planning activities.**

#### **393.5 DOT Support for Marine Highway-related research.**

#### **393.6 America's Marine Highway Program Project grants.**

**AUTHORITY:** Pub. L. 110-140, title XI, subtitle C, sections 1121-1123, 121 Stat. 1494; Pub. L. 112-213, title IV, section 405, 126 Stat. 1541; 49 CFR 1.92 and 1.93(a), 46 U.S.C. 55601, 55604, 55605.

### **Subpart A – General Provisions**

#### **§ 393.1 Special definitions.**

For the purposes of this part:

(a) *Administrator* means the Maritime Administrator, Maritime Administration, U.S. Department of Transportation USDOT. The Administrator is responsible for administering the America's

Marine Highway Program (AMHP) and making route and project recommendations to the Secretary.

(b) *Department* means the U.S. Department of Transportation.

(c) *Cargo* on a Marine Highway service means goods transported in commerce and generally refers to, but is not limited by, the types and kinds of cargo that are described in the definition of “Short sea transportation”, in paragraph (k) of this section. Neither weight nor proportionality are considered under this definition. The term as used in this context is generally interchangeable with the term “Freight”, defined in paragraph (d) of this section.

(d) *Freight* on a Marine Highway service means goods transported in commerce and generally refers to, but is not limited by, the types and kinds of cargo that are described in the definition of “Short sea transportation”, in paragraph (k) of this section. Neither weight nor proportionality are considered under this definition. The term as used in this context is generally interchangeable with the term “Cargo”, defined in paragraph (c) of this section.

(e) *Marine Highway Routes* or *Routes* mean commercially navigable coastal, inland, and intracoastal waters of the United States as designated by the Secretary. This includes connections between U.S. ports and Canadian ports on the Great Lakes-Saint Lawrence Seaway System, and non-contiguous U.S. ports. Marine Highway Routes are a component of the Nation’s surface transportation system. Each Marine Highway Route is described in terms of the specific landside transportation routes (road or railway) that it supplements or to which it connects. All previously designated Marine Highway “corridors,” “connectors,” and “crossings” are now designated as “Routes.”

(f) *Marine Highway Projects* are planned or contemplated new services, or expansions of existing services, on designated Marine Highway Routes, that seek to provide new modal

choices to shippers, reduce transportation costs, and/or provide public benefits, which include reduced air emissions, reduced road maintenance costs, and improved safety and resiliency impacts. Project Applicants propose projects and the Secretary may designate projects consistent with this part.

(g) *Project Applicant* means a public entity with operations, or administrative areas of responsibility, that are adjacent to or near the relevant Route that applies for designation of a Marine Highway Project pursuant to this part. Eligible applicants include State governments (including State departments of transportation), metropolitan planning organizations, port authorities and tribal governments.

(h) *Program Office* means Office of Marine Highways and Passenger Services.

(i) *Route Sponsors* are public entities with operations or administrative areas of responsibility that are adjacent to or related to the relevant Route that recommend a commercially navigable waterway for designation as a Marine Highway Route. Eligible Route Sponsors include State governments (including State departments of transportation), metropolitan planning organizations, port authorities, non-Federal navigation districts and tribal governments.

(j) *Secretary* means the Secretary of Transportation.

(k) *Short sea transportation* means the carriage by a U.S. documented vessel of cargo-

(1) That is-

- (i) Contained in intermodal cargo containers and loaded by crane on the vessel;
- (ii) Loaded on the vessel by means of wheeled technology;
- (iii) Shipped in discrete units or packages that are handled individually, palletized, or unitized for purposes of transportation; or
- (iv) Freight vehicles carried aboard commuter ferry boats; and

(2) That is-

(i) Loaded at a port in the United States and unloaded either at another port in the United States or at a port in Canada located in the Great Lakes-Saint Lawrence Seaway System; or,

(ii) Loaded at a port in Canada located in the Great Lakes-Saint Lawrence Seaway System and unloaded at a port in the United States.

(l) *United States documented vessel* means a vessel documented under 46 CFR part 67.

## **Subpart B-Marine Highway Route and Project Designations**

### **§ 393.2 Marine Highway Routes.**

(a) *What are the minimum eligibility requirements for MARAD to recommend a Marine Highway Route for the Secretary to designate?*

(1) MARAD may recommend Marine Highway Routes that relieve landside congestion along coastal corridors or that promote short sea transportation; and

(2) That advance the objectives of the AMHP in paragraph (c) of this section.

(b) *When can a Route Sponsor request designation of a Marine Highway Route?*

(1) The Department accepts Marine Highway Route designation requests any time. Route Sponsors must submit designation requests through the Program Office.

(2) The Maritime Administration publishes all designated Routes on its website. Go to <http://www.marad.dot.gov> and search “America’s Marine Highways” to see the current list.

(c) *What should Route Sponsors consider when preparing Marine Highway Route designation requests?*

(1) Route Sponsors designation requests should explain how a proposed route will help achieve the following objectives:

(i) Establishing Marine Highway Routes as extensions of the national surface transportation system;

(ii) Developing multi-jurisdictional coalitions and partnerships that focus public and private efforts to improve reliability and resiliency of the Route for freight and passengers;

(iii) Obtaining public benefits as described in paragraph (d)(1)(vi) of this section; and

(iv) Identifying potential savings that could be realized by providing an alternative to existing supply chains through short sea transportation.

(2) [Reserved]

(d) *What information should Route Sponsors include in their designation requests?*

(1) One or more eligible Route Sponsors may submit Marine Highway Route designation requests to the Program Office. Designation requests should include the following information:

(i) *Physical Description of the Proposed Marine Highway Route.* Describe the proposed Marine Highway Route, and its connection to existing or planned transportation infrastructure and intermodal facilities. Include key navigational factors such as available draft, channel width, bridge air draft, or lock clearance, and any foreseeable impacts on navigation or commerce.

When available, include one or more maps of the proposed Route.

(ii) *Surface transportation regions served.* (A) Land transportation routes that would benefit. Provide a summary of any land transportation route that the Marine Highway Route would benefit. Include a description of the route, its primary users, the nature, locations and occurrence of travel delays, urban areas affected, and other geographic or jurisdictional issues that impact its overall operation and performance.

(B) U.S. Domestic Shipping Lane Served. For Marine Highway Routes that pass through waters outside U.S. territorial waters, provide a summary of the shipping routes or trade lanes

that the Marine Highway Route would benefit. Include a description of the route, its primary users, the nature, locations and occurrence of travel delays, urban areas affected, and other geographic or jurisdictional issues that impact its overall operation and performance.

(iii) *Involved parties.* Provide the organizational structure of the Route Sponsors and supporters recommending the Route designation, including business affiliations and private sector stakeholders. Multi-jurisdictional coalitions may include State Departments of Transportation, metropolitan planning organizations, municipalities and other governmental entities (including tribal governments). Include the extent to which these entities have expressed support for the route designation and describe any affiliations with environmental groups or civic associations, or affiliations with any foreign interests.

(iv) *Volume and characteristics.* If authoritative data are available, provide the volume of passengers and/or cargo that are candidates for shifting to water transportation on the proposed Route. Otherwise provide estimates for this information, include identified shippers, manufacturers, distributors, and other entities that could benefit from a Marine Highway alternative, and the extent to which these entities have expressed support for the Marine Highway Route designation request.

(v) *Congestion reduction.* Describe the extent to which the proposed Route could relieve landside congestion in measurable terms, if applicable. Include any known offsetting land transportation infrastructure savings (either construction or maintenance) that would likely result from the Route, if applicable.

(vi) *Public benefits.* Provide, if known, the net savings over status quo in emissions, including greenhouse gases, energy consumption, landside infrastructure maintenance costs, safety and system resiliency. Specify if the Marine Highway Route represents the most cost-



effective option among other modal improvements. Include consideration of the implications future growth may have on the proposed Route.

(vii) *Public costs.* If applicable and known, identify any costs that may result from designation of the route. If able, provide costs that are quantifiable such as the additional cost of emissions or energy consumption required to effectively leverage the benefits of the designated route. These costs should be a component in the net savings identified in paragraph (d)(1)(vi) of this section.

(viii) *Impediments.* Describe known or anticipated obstacles to utilization of the proposed Marine Highway Route. Include any strategies, either in place or proposed, to deal with the impediments.

(2) [Reserved]

*(e) How will the Program Office evaluate and recommend Marine Highway Route designation requests?*

(1) The Program Office will evaluate and recommend Route Designations based on an analysis and technical review of the information provided by the Route Sponsor. The Maritime Administration will recommend Routes that receive a favorable technical review, and meet other criteria described in this part, for designation by the Secretary.

(2) The Program Office may consider additional factors and may request supplemental information during the review process. USDOT will notify Route Sponsors as to the status of their request in writing once the Secretary makes a determination.

### **§ 393.3 Marine Highway Projects.**

*(a) What are the minimum eligibility requirements for MARAD to recommend a Marine Highway Project for the Secretary to designate?*

(1) MARAD may recommend only those Marine Highway Projects that will use U.S. documented vessels and mitigate landside congestion or promote short sea transportation.

(2) MARAD may recommend only those Marine Highway Projects that:

(i) Involve the carriage of cargo in Short Sea Transportation as defined in paragraph (k) of this section;

(ii) Involve new or expand existing services for the carriage of cargo; and

(iii) Are on a designated Marine Highway Route.

(3) Proposed Route Designations are accepted at any time, and may be submitted together with the proposed Project Designation.

(4) Successful Project Applicants must demonstrate a direct connection between a proposed Marine Highway Project and the carriage of cargo through ports on Designated Marine Highway Routes.

(b) *When does the Program Office accept Marine Highway Project designation applications?*

(1) The Administrator will announce by notice in the Federal Register and on MARAD's AMHP website open season periods to allow Project Applicants opportunities to submit Marine Highway Project designation applications.

(2) [Reserved]

(c) *What should Project Applicants include when preparing a Marine Highway Project designation application?*

(1) The market or customer base to be served by the service and the service's value proposition to customers. This includes -

(i) A description of how the market is currently served by transportation options;

- (ii) Identities of shippers that have indicated an interest in, and level of commitment to, the proposed service;
- (iii) Specific commodities, markets, and shippers the Project is expected to attract;
- (iv) Extent to which interested entities have been educated about the Project and expressed support, and
- (v) A marketing strategy for the project if one exists.

(2) *Operational framework.* A description of the proposed operational framework of the project including origin/destination pairs, transit times, vessel types, and service frequency.

(3) *The cost model for the proposed service.* The cost model should be broken down by container, trailer, or other freight unit, including loading and discharge costs, vessel operating costs, drayage costs, and other ancillary costs. Provide a comparison cost model outlining the current costs for transportation using landside mode (truck and rail) alternatives for the identified market that the proposed project will serve. Provide the project's financial plan and provide projected revenues and expenses. Include labor and operating costs, drayage, fixed and recurring infrastructure and maintenance costs, vessel or equipment acquisition or construction costs, etc. Include any anticipated changes in local or regional short sea transportation, policy or regulations, ports, industry, or other developments affecting the project. In the event that public sector financial support is being sought, describe the amount, form and duration of public investment required. Applicants may email [mh@dot.gov](mailto:mh@dot.gov) to request a sample cost model.

(4) An overall quantification of the net public benefits estimated to be gained through the successful initiation of the Marine Highway Project, including highway miles saved, road maintenance savings, air emissions savings, and safety and resiliency impacts.

(5) *Marine Highway Route(s)*. Identify the designated Marine Highway Routes the Project will utilize.

(6) *Organization*. Provide the organizational structure of the proposed project, including an outline of the business affiliations, environmental, non-profit organizations and governmental or private sector stakeholders.

(7) *Partnerships*: -- (i) *Private sector partners*. Identify private sector partners and describe their levels of commitment to the proposed service. Private sector partners can include terminals, vessel operators, shipyards, shippers, trucking companies, railroads, third-party logistics providers, shipping lines, labor, workforce and other entities deemed appropriate by the Secretary.

(ii) *Public sector partners*. Identify State Departments of Transportation, metropolitan planning organizations, municipalities and other governmental entities, including tribal entities, that Project Applicants have engaged and the extent to which they support the service. Include any affiliations with environmental groups or civic associations.

(iii) *Documentation*. Provide documents affirming commitment or support from entities involved in the project.

(8) *Public benefits*. These measures reflect current law and are consistent with USDOT's Strategic Goals. Project Applicants should organize external net cost savings and public benefits of the Project based on the following six categories:

(i) *Emissions benefits*. Address any net savings, in quantifiable terms, now and in the future, over current emissions practices, including greenhouse gas emissions, criteria air pollutants or other environmental benefits the project offers.

(ii) *Energy savings.* Provide an analysis of potential net reductions in energy consumption, in quantifiable terms, now and in the future, over the current practice.

(iii) *Landside transportation infrastructure maintenance savings.* To the extent the data is available indicate, in dollars per year, the projected net savings of public funds that would result in road or railroad maintenance or repair, including pavement, bridges, tunnels or related transportation infrastructure from a proposed project. Include the impacts of accelerated infrastructure deterioration caused by vehicles currently using the route, especially in cases of oversize or overweight vehicles. This information applies only to projects for a marine highway service where a landside alternative exists.

(iv) *Economic competitiveness.* To the extent the data is available, describe how the project will measurably result in transportation efficiency gains for the U.S. public. For purposes of aligning a project with this outcome, applicants should provide evidence of how improvements in transportation outcomes (such as time savings, operating cost savings, and increased utilization of assets) translate into long-term economic productivity benefits.

(v) *Safety improvements.* Describe, in measurable terms, the projected safety improvements that would result from the proposed operation.

(vi) *System resiliency and redundancy.* To the extent data is available, describe, if applicable, how a proposed Marine Highway Project offers a resilient route or service that can benefit the public. Where land transportation routes serving a locale or region are limited, describe how a proposed project offers an alternative and the benefit this could offer when other routes are interrupted as a result of natural or man-made incidents.

(9) *Proposed project timeline.* Include a proposed project timeline with estimated start dates and key milestones. If applicable, include the point in the timeline at which the enterprise is anticipated to attain self-sufficiency.

(10) *Support and investment required.* Describe any known or anticipated obstacles to either implementation or long-term success of the project. Include any strategies, either in place or proposed, to mitigate impediments. Identify specific infrastructure gaps such as docks, cranes, ramps, etc. that will need to be addressed in order for the project to become economically viable. Include estimates for the required investments needed to address the infrastructure gaps.

(11) *Environmental considerations.* Project Applicants must provide all information necessary to assist MARAD's environmental analysis of the proposed project, pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.) and other environmental requirements.

*(d) How will the Program Office evaluate and recommend Marine Highway Project applications for designation?*

(1) The Program Office will evaluate and recommend for designation by the Secretary those Projects based on an analysis and technical review of the information provided by the Project Applicant. MARAD will recommend Projects that operate on a designated Marine Highway Route, receive a favorable technical review, and meet other criteria described in this part, for designation by the Secretary.

(2) The Program Office may consider additional factors and may request supplemental information during the review process. USDOT will notify Project Applicants as to the status of their application in writing once the Secretary makes a determination.

*(e) How will MARAD support designated America's Marine Highway Projects?*

(1) Upon designation as a Marine Highway Project, the Department Program Office will coordinate with the Project Applicants to identify the most appropriate departmental actions to support the project. USDOT support could include any of the following, as appropriate and subject to agency resources:

(i) Promote the service with appropriate governmental, regional, State, local or tribal government transportation planners, private sector entities or other decision makers to the extent permitted by law.

(ii) Coordinate with ports, State Departments of Transportation, metropolitan planning organizations, localities, other public agencies and the private sector to support the designated service. Efforts can be aimed at identifying resources, obtaining access to land or terminals, developing landside facilities and infrastructure, and working with Federal, regional, State, local or Tribal governmental entities to remove barriers to success.

(iii) Pursue commitments from Federal entities to transport Federally owned or generated cargo using the services of the designated project, when practical or available.

(iv) In cases where transportation infrastructure is needed, Project Applicants may request to be included on the Secretary's list of high-priority transportation infrastructure projects under EO 13274, "Environmental Stewardship and Transportation Infrastructure Project Review."

(v) Assist with developing individual performance measures for Marine Highway Projects.

(vi) Work with Federal entities and regional, State, local and tribal governments to include designated Projects in transportation planning.

(vii) Coordinate with public and private entities to resolve impediments to the success of Marine Highway Projects.

(viii) Conduct research on issues specific to Marine Highway Projects.

(ix) Advise Project Applicants on the availability of various Federal funding mechanisms to support the Projects.

(x) Maintain liaison with Project Applicants and representatives of designated Projects to provide ongoing support and identify lessons learned and best practices for other projects and the overall Marine Highway program.

(2) [Reserved]

(f) *How will the Department protect confidential information?*

(1) If your application, including attachments, includes information that you consider to be a trade secret or confidential commercial or financial information, or otherwise exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552), as implemented by the Department at 49 CFR part 7, you may assert a claim of confidentiality.

(2) *What should I do if I believe my Project designation application contains confidential or business sensitive information?*

(i) Note on the front cover that the submission “Contains Confidential Business Information (CBI);”

(ii) Mark each affected page “CBI;” and

(iii) Clearly highlight or otherwise denote the CBI portions. The USDOT protects such information from disclosure to the extent allowed under applicable law.

(3) *What will happen if information related to my Project designation application is the subject of a request under the Freedom of Information Act (FOIA)?* We will apply the



procedures contained in 49 CFR part 7 to a request from non-Federal third-parties for information related to documents you submit under this part. We will consider your claim of confidentiality at the time someone requests the information under FOIA. Only information that is ultimately determined to be confidential under that procedure will be exempt from disclosure under FOIA.

*(g) Is there a specific format required for project designation applications and attached documents?*

(1) When responding to specific solicitations for Marine Highway Projects by the Program Office, Project Applicants should include all of the information requested by paragraph (c) of this section organized in a manner consistent with the elements set forth in that section.

The Program Office reserves the right to ask any applicant to supplement the data in its application, but expects applications to be complete upon submission. The narrative portion of an application should not exceed 20 pages in length. Documentation supporting the assertions made in the narrative portion may also be provided in the form of appendices, but limited to relevant information. Applications may be submitted electronically via *regulations.gov* (<http://www.regulations.gov>). Applications submitted in writing must include the original and three copies and must be on 8.5" x 11" single spaced paper, excluding maps, Geographic Information Systems (GIS) representations, *etc.*

(2) In the event that the Project Applicant of a Marine Highway Project that has already been designated by the Secretary seeks a modification to the designation because of a change in project scope, an expansion of the project, or other significant change to the project, the Project Applicant should request the change in writing to the Secretary via the Maritime Administrator. The request must contain any changed or new information that is relevant to the project.

(h) *What does the Program Office do to ensure designated projects are developing properly?*

(1) Once designated projects enter the operational phase (either start of a new service, or expansion of existing service), the Program Office will evaluate them regularly to determine if the project is likely to achieve its objectives.

(2) Overall project performance will be assessed according to three categories - exceeds, meets, or does not meet original projections - in each of the three areas defined below:

(i) *Public benefit.* Does the Project meet the stated goals in shifting specific numbers of vehicles (number of trucks, rail cars or automobiles) off the designated landside routes? The Program Office will assume other public benefits, including energy savings, reduced emissions, and safety improvements to be a direct derivative of either numbers of vehicles reduced, or vehicle/ton miles avoided, unless specific factors change (such as a change in vessel fuel or emissions).

(ii) *Public cost.* Is the overall cost to the Federal Government (if any) on track with estimates at the time of designation? The overall cost to the Federal Government represents the amount of Federal investment (*i.e.*, direct funding, loan guarantees or similar mechanisms) reduced by the offsetting savings the project represents (road/bridge wear and tear avoided, infrastructure construction or expansion deferred).

(iii) *Timeliness factor.* Is the project on track for the point at which the enterprise is projected to attain self-sufficiency? For example, if the project was anticipated to attain self-sufficiency after 36 months of operation, is it on track at the point of evaluation to meet that objective? This can be determined by assessing revenues, cargo and passenger trends, expenses and other factors established in the application review process.

(i) *Can a Project designation expire or be terminated?*

(1) Project Designations are effective for a period of five years, or until the date the project is completed, or MARAD cancels the designation. Project Designation will expire after three years of inactivity.

(2) Project Applicants wishing to extend a Project Designation must submit an updated application no later than six months before the five-year designation period ends. Project Applicants who no longer wish to maintain project designation may submit a request to the Secretary to revoke their designation.

### **Subpart C – Department of Transportation Efforts to Foster and Support America’s Marine Highways**

#### **§ 393.4 DOT Support for planning activities.**

##### *(a) How does DOT provide support?*

(1) The Program Office engages in coordination and planning activities with Federal, State, local and tribal governments and planning and private entities organizations to encourage the use of designated Marine Highway Routes and Projects. These activities include:

(i) Working with these entities to assess plans and develop strategies, where appropriate, to incorporate Marine Highway transportation and other short sea transportation solutions to their statewide and metropolitan transportation plans, including the Statewide Transportation Improvement Programs and State Freight Plans.

(ii) Facilitating groups of States and multi-State transportation entities to determine how Marine Highway transportation can address port congestion, traffic delays, bottlenecks, and other interstate transportation challenges to their mutual benefit.

(iii) Identifying other Federal agencies that have jurisdiction over services, or which currently provide funding for components of services, in order to determine which agencies should be consulted and assist in the coordination process.

(iv) Organizing the Department's modal administrations, including Federal Highway Administration, Federal Motor Carrier Safety Administration, Federal Railroad Administration, Saint Lawrence Seaway Development Corporation, and Federal Transit Administration, as appropriate, for support and to evaluate costs and benefits of proposed Marine Highway Routes and Projects.

(2) [Reserved]

(b) [Reserved]

### **§ 393.5 DOT Support for Marine Highway-related research.**

*(a) How does DOT support research?*

(1) The Program Office works in consultation with public and private entities as appropriate, within the limits of available resources, to identify impediments, develop incentives, and conduct innovative research, in support of the America's Marine Highway Program or in direct support of specific designated Marine Highway Routes and Projects. The primary objectives of selected research projects are to:

(i) Identify markets, cargoes, and service parameters that could facilitate the development of new or expanded Marine Highway Services.

(ii) Identify existing or emerging technology, vessel design, infrastructure designs, and other improvements that would reduce emissions, increase fuel economy, and lower costs of Marine Highway transportation and increase the efficiency of intermodal transfers.

(iii) Identify impediments to the establishment of Marine Highway services.

(iv) Identify incentives to increase the use and efficiency of Marine Highway services.

(b) The Secretary, in consultation with the Administrator of the Environmental Protection Agency, may conduct research on short sea transportation regarding:

(1) The environmental and transportation benefits to be derived from short sea transportation alternatives for other forms of transportation;

(2) Technology, vessel design, and other improvements that would reduce emissions, increase fuel economy, and lower costs of short sea transportation and increase the efficiency of intermodal transfers; and

(3) Solutions to impediments to short sea transportation projects designated.

**§ 393.6 America's Marine Highway Program Project grants.**

(a) *How does MARAD administer the AMHP grant program?*

(1) The Associate Administrator for Intermodal Systems Development manages the program under the guidance and the immediate administrative direction of the Maritime Administrator.

(2) MARAD establishes grant program priorities as reflected in its grant opportunity announcements and, from time-to-time, issues clarifying guidance documents through the MARAD website and the Federal Register.

(3) The Administrator makes funding recommendations to the Secretary, who has the authority to award grants.

(b) *How does MARAD make grant opportunities known?*

(1) MARAD determines which grant opportunities it will offer, and establishes application deadlines and programmatic requirements when grant funds become available to the AMHP.

(2) The MARAD staff prepares Notice of Funding Opportunity (NOFO) announcements consisting of all information necessary to apply for each grant and publishes the announcement in the Federal Register and on grants.gov.

*(c) How may an applicant apply for an AMHP grant?*

(1) Applicants may apply for a grant using grants.gov or, in connection with a Federal Register announcement, by submitting the necessary information to the AMHP Office in electronic form.

(2) [Reserved]

**By Order of the Maritime Administrator**

**Dated: November 28, 2017**

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**T. Mitchell Hudson, Jr.**

**Secretary, Maritime Administration.**

[FR Doc. 2017-25897 Filed: 11/30/2017 8:45 am; Publication Date: 12/1/2017]